

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6113
BILL NUMBER: SB 9

NOTE PREPARED: Oct 31, 2008
BILL AMENDED:

SUBJECT: Restricted Disclosure of Certain Arrest Records.

FIRST AUTHOR: Sen. Steele
FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X GENERAL
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill allows a sentencing court to prohibit the disclosure to a noncriminal justice organization or individual of records relating to a person's arrest if the person is not charged, the person is acquitted of all criminal charges, or if the person's conviction is vacated.

(The introduced version of this bill was prepared by the Sentencing Policy Study Committee.)

Effective Date: July 1, 2009.

Explanation of State Expenditures: This legislation would prohibit all law enforcement agencies from releasing a person's limited criminal history to certain parties if these records are restricted for disclosure. This bill will also allow an individual who (1) is not prosecuted, (2) has charges against them dropped, (3) is acquitted of all criminal charges, or (4) is convicted of a crime where the conviction is subsequently vacated, to petition a court to restrict disclosure of the arrest records to noncriminal justice organizations and other individuals. This petition is required to be served to a prosecuting attorney as well as the state central repository for records.

Indiana State Police: The Indiana State Police (ISP) maintain the criminal history data base. Any additional staff and computer time required would likely be within their existing level of resources.

Prosecuting Attorney: A prosecuting attorney may oppose a petition to restrict the disclosure of arrest records by filing a notice of opposition to the petitioned court and must set forth reasons for opposing the petition. A copy of the notice of opposition filed by the prosecuting attorney is required to be served to the individual petitioning the court. Prosecuting attorneys will experience an increase in workload to the extent that they file a notice of opposition and the matter is scheduled for a hearing.

Background Information: Under current law, conditions exist where courts can seal arrest records from disclosure and order limited criminal history information to be either destroyed or restricted.

(1) Arrest Records: IC 35-38-5-1 allows an individual to petition the court for expungement of arrest records under the following conditions: (1) an arrest does not lead to the filing of criminal charges, or (2) criminal charges are dropped due to mistaken identity, no offense was committed, or a lack of probable cause. When an expungement is granted, state law prohibits any information concerning the arrest from being placed or retained in any state central repository for criminal history information or in any other alphabetically arranged criminal history information system maintained by a local, regional, or statewide law enforcement agency.

(2) Limited Criminal History: IC 35-38-5-5 allows a person to petition ISP to limit access to an individual's limited criminal history information to criminal justice agencies if more than 15 years have elapsed since the date the person was discharged from probation, imprisonment, or parole (whichever is later) for the last conviction for a crime. However, this does not apply to individuals who (1) have volunteered services involving contact with, care of, or supervision of a child who is under the discretion of a social services agency or nonprofit corporation, or (2) is being sought after by the parent locator service of the Child Support Bureau in the Department of Child Services.

The Indiana Supreme Court Division of State Court Administration reports that currently records can be expunged when someone is arrested without a finding of probable cause. Regulations concerning juvenile record expungement are more relaxed than petitions for adult record expungement. When filing for expungement, the request is filed under the original cause number that was assigned when the case was first filed. The Division of State Court Administration reports there would be no fees assessed as these fees would have been paid when the case was first disposed.

The Division of State Court Administration reports that the number of expungement requests are indeterminable. This information is specific to particular cases and is not reported to the Division. Petitions for the disclosure of arrest records are rarely filed, and information concerning requests are not uniformly collected. Additionally, the Division of State Court Administration does not require courts to report how many cases have been put aside or how many convictions have been vacated.

Explanation of State Revenues:

Explanation of Local Expenditures: The provisions of this bill may increase court workload to the extent qualifying individuals petition to restrict the disclosure of arrest records within time frames established in the legislation.

Explanation of Local Revenues:

State Agencies Affected: Indiana State Police.

Local Agencies Affected: Trial courts, local county prosecutors, local law enforcement agencies.

Information Sources: Jim Diller, Division of State Court Administration; Indiana State Police.

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